IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 322 (SB) of 2006

Dharam Veer Singh,
S/o Sri Pratap Singh,
Assistant Excise Commissioner,
Nainital. **.... Petitioner.**

Versus

Secretary, Excise Department,
Government of Uttaranchal,
Dehradun. **....Respondent.**

Coram:
Hon'ble M.M. Ghildiyal, J
Hon'ble B.C. Kandpal, J
(PC)

Heard Sri Ravi Babulkar, learned counsel for the petitioner and learned standing counsel for State of Uttaranchal on behalf of respondent.

By means of this petition, the petitioner has prayed for the following reliefs:

i. *Issue a writ, order or direction in the nature of Mandamus commanding and directing the respondent to decide / dispose of the representation of the petitioner by speaking order in the light of Government Order dated 13.05.2003 (Annexure 5) and further to consider the petitioner's adhoc promotion on the post of Deputy Excise Commissioner accordingly.*

ii. *Issue any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

iii. Award the cost of the writ petition to the petitioner.

Brief facts as narrated in the writ petition are that petitioner was initially appointed on the post of Excise Inspector on 09.09.1983. While petitioner was posted at Raibareilly on 23.12.1993, an FIR was lodged against three persons under Section 420, 120B, 467, 468, 471 and 177 IPC read with section 3/7 of Essential Commodities Act, in police station – Devband, District – Saharanpur. The name of the petitioner was not mentioned in the aforesaid FIR. The aforesaid FIR was lodge after one year of petitioner's transfer from Devband, District – Saharanpur to Raibareilly.

The said case is still pending. Departmental inquiry was initiated against the petitioner, however, petitioner was not suspended. The Disciplinary Authority on 24.10.1996 awarded censure entry against the petitioner, After the censure entry was awarded to the petitioner, petitioner was promoted on 27.02.1998 to the post of Assistant Excise Commissioner and was posted in District – Champawat. At present, petitioner is posted in District – Nainital.

As per seniority, petitioner comes within the zone of consideration for promotion to the post of Deputy Excise Commissioner, after having served as Assistant Excise Commissioner, for two years.

On 19.10.2004, Departmental Promotion Committee was constituted. Since the petitioner was eligible to be considered for the post of Deputy Excise Commissioner, however, in view of the fact that criminal case is pending procedure for sealed cover was adopted against the petitioner and the promotion of the petitioner could not be given effect to till date.

Petitioner has relied on Government Order dated 13.05.2003, which provides that in case the procedure of sealed cover is adopted adhoc promotion may be given to the delinquent employee where inquiry is pending since long.

In this respect, petitioner has also moved a representation dated 03.12.2005 before Secretary, Excise Department, State of Uttaranchal, Dehradun, which is Annexure no. 6 to the writ petition with a prayer that since the inquiry is pending for the last thirteen years petitioner may be granted adhoc promotion by giving benefit of government Order dated 13.05.2003.

Since no action has been taken by the respondents on the representation of the petitioner dated 03.12.2005, petitioner has filed present writ petition for a direction to the respondent to take decision on the representation of the petitioner within stipulated time.

The prayer is innocuous. Consequently, we deem it fit and proper to direct the respondent i.e. Secretary, Excise Department, State of Uttaranchal, Dehradun to take decision on the representation of the petitioner dated 03.12.2005 (Annexure no. 6 to the writ petition) within a period of six weeks from the date of receipt of certified copy of this order.

With this direction writ petition as well as interim relief application no. 13639 of 2006 is disposed of. No order as to costs.

(B.C. Kandpal, J) **(M.M. Ghildiyal, J)**

November 8, 2006
SKSharma